U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

FILE: [redacted] Office: Vermont Service Center Date: JAN 21 2000

EAC 98 120 53063

IN RE: Petitioner:
Beneficiary: [redacted]
nee [redacted]

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iii)

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of the Dominican Republic who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director determined that the petitioner failed to establish that she: (1) is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A), 8 U.S.C. 1151(b)(2)(A)(i) or 1153(a)(2)(A) based on that relationship; (2) has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; (3) is a person of good moral character; and (4) is a person whose deportation (removal) would result in extreme hardship to herself, or to her child. The director, therefore, denied the petition.

On appeal, counsel submits additional evidence and requests that the petitioner's desperate situation not be ignored and that the petition be approved.

8 C.F.R. 204.2(c)(1) states, in pertinent part, that:

> (i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:
>
> > (A) Is the spouse of a citizen or lawful permanent resident of the United States;
> >
> > (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
> >
> > (C) Is residing in the United States;
> >
> > (D) Has resided in the United States with the citizen or lawful permanent resident spouse;
> >
> > (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who

has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The petition, Form I-360, shows that the petitioner arrived in the United States on March 3, 1995. However, her current immigration status or how she entered the United States was not shown. The petitioner married her United States citizen spouse on February 23, 1996 at Yonkers, New York. On March 13 1998, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(B) provides that the self-petitioning spouse must establish that she is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship. 8 C.F.R. 204.2(c)(1)(ii) provides that the self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. 8 C.F.R. 204.2(c)(2)(ii) provides that a self-petition must be accompanied by evidence of the relationship. Primary evidence of the marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages of both the self-petitioner and the alleged abuser.

The director determined that the petitioner failed to submit evidence of the legal termination of her prior marriage. On appeal, counsel furnished a copy of a divorce decree as proof that the prior marriage of the petitioner terminated on August 15, 1995 in the Dominican Republic. The petitioner has, therefore, overcome this portion of the director's findings pursuant to 8 C.F.R. 204.2(c)(1)(i)(A).

8 C.F.R. 204.2(c)(1)(i)(F) requires the petitioner to establish that she is a person of good moral character. Pursuant to 8 C.F.R. 204.2(c)(2)(v), primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check for each locality or state in the United States in which the self-petitioner has resided for six or more

months during the three-year period immediately preceding the filing of the petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self petition.

The director determined that the petitioner failed to submit any evidence of good moral character although she was requested on April 7, 1998 to submit additional evidence. On appeal, counsel submits a good conduct certificate from the New York Police Department (NYCPD) indicating that criminal history search based solely on NYCPD records shows that no record was found in the case of the petitioner. The petitioner has, therefore, overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(F).

8 C.F.R. 204.2(c)(1)(i)(E) requires the petitioner to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. 204.2(c)(1)(vi) provides:

> [T]he phrase, "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

8 C.F.R. 204.2(c)(2) provides, in part:

> (i) Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition.

> The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.
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> (iv) Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuse may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

Because the petitioner furnished insufficient evidence to establish that she has met this requirement, she was requested on April 7, 1998 to submit additional evidence. The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence. The discussion will not be repeated here. The director, however, noted that the psychological evaluation, the Temporary Protection Order, and the police report were all based on the petitioner's own testimony and found these to be insufficient due to the fact that there is, in essence, no corroborating evidence to establish her claims.

On appeal, counsel submits evidence previously furnished. The petitioner, however, neither refuted the director's findings nor furnished new evidence. The petitioner has failed to establish she has been battered by, or has been the subject of extreme cruelty perpetrated by her U.S. citizen spouse and to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

8 C.F.R. 204.2(c)(1)(i)(G) requires the petitioner to establish that her removal would result in extreme hardship to herself or to her child. 8 C.F.R. 204.2(c)(1)(viii) provides:

> The Service will consider all credible evidence of extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances surrounding the abuse. The extreme hardship claim will

> be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation (removal) would cause extreme hardship. Hardship to persons other than the self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioning spouse's deportation (removal) would cause extreme hardship.

Because the petitioner furnished insufficient evidence to establish that her removal to the Dominican Republic would be an extreme hardship to herself, the petitioner was requested on April 7, 1998 to submit additional evidence. The director listed examples of factors to be considered in determining whether her removal from the United States would result in extreme hardship. No additional evidence was furnished.

To establish extreme hardship, the petitioner must demonstrate more than the existence of mere hardship because of family separation or financial difficulties. See Matter of Ngai, 19 I&N Dec. 245 (Comm. 1984), citing Matter of Shaughnessy, 12 I&N Dec. 810 (BIA 1968), and Matter of W-, 9 I&N Dec. 1 (BIA 1960). Further, economic detriment alone is insufficient to support a finding of extreme hardship within the meaning of section 240A of the Act. See Palmer v. INS, 4 F.3d 482, 488 (7th Cir. 1993); Mejia-Carillo v. United States INS, 656 F.2d 520, 522 (9th Cir. 1981). Moreover, the loss of current employment, the inability to maintain one's present standard of living or to pursue a chosen profession, separation from a family member, or cultural readjustment do not rise to the level of extreme hardship. See Matter of Ige, 20 I&N Dec. 880, 882 (BIA 1994); Lee v. INS, 550 F.2d 554 (9th Cir. 1977).

On appeal, counsel argues that the petitioner has been in the United States for several years, that she is a 32-year-old single woman and the social and economic opportunities the beneficiary might find in her home country would be few or nonexistent, and based on her age, there would be complete inability to obtain gainful employment due to her lack of skills, and the adverse psychological impact of deportation would be too much for the petitioner to bear. Counsel further argues that years have passed and the beneficiary has lost touch with her friends and family outside the United States; that she must now face the prospect of returning to her home country after a shameful failed marriage leaving behind her friends, her adopted home, and her self respect; and that the adverse psychological impact of these combined factors will be overwhelming for the petitioner. He added that returning the petitioner to her home country would in effect be condemning her to a life of loneliness, depression, poverty, and fear.

No documentary evidence, however, has been furnished to substantiate the petitioner's claim that her removal from the United States would result in extreme hardship based on economic, political, and social problems in her country. Nor is there evidence to establish that finding employment is particularly difficult at her age. It is noted that the record contains no evidence the petitioner is even employed in the United States. Additionally, no documentary evidence has been furnished to establish that the petitioner would be humiliated, ostracized, or stigmatized because of her failed marriage, or that she would be shunned to the level of extreme hardship as envisioned by Congress, and that she would not receive support from her family there.

Further, while it is noted that the petitioner has sought psychiatric evaluation, it is not clear that she is presently seeking counseling. Nor is there evidence of the therapeutic treatment plan, that the petitioner's presence in the United States is vital to her medical and psychiatric needs, and that her medical and psychiatric needs cannot be met in the Dominican Republic.

Readjustment to life in the native country after having spent a number of years in the United States is not the type of hardship that has been characterized as extreme, since most aliens who have spent time abroad suffer this kind of hardship. See Matter of Uy, 11 I&N Dec. 159 (BIA 1995). Furthermore, as noted above, the mere loss of a job and the resulting financial loss, the inability to maintain one's present standard of living or to pursue a chosen profession, separation from a family member, or cultural readjustment do not constitute extreme hardship. Further, emotional hardship caused by severing family and community ties is a common result of deportation. See Matter of Pilch, Int. Dec. 3298 (BIA 1996).

Counsel, on appeal, further argues that the petitioner would lose access to the security and protective comfort provided to her by the United States courts and criminal justice system, the petitioner's citizen spouse could then travel to the petitioner's home country and easily continue his abusive practices either for revenge or for his own amusement.

The petitioner, however, has not established that she would be unable to seek adequate protection from further abuse, and that the country conditions in the Dominican Republic will cause her extreme hardship. Nor is there evidence that the petitioner's spouse is pursuing or stalking her in the United States. Furthermore, the likelihood that her spouse would travel to the Dominican Republic, his ability to locate the petitioner in her home country and whether the spouse is familiar with the foreign culture, locality, or that the spouse's family, friends or others acting on behalf of the abuser in the foreign country would physically or psychologically harm the petitioner has not been established.

Absent evidence to establish a realistic possibility of the citizen spouse locating the petitioner in the foreign country, or his ability to travel there carries little weight when determining extreme hardship.

The record lists no other equities which might weigh in the petitioner's favor. Even applying a flexible approach to extreme hardship, the facts presented in this proceeding, when weighed in the aggregate, do not demonstrate that the petitioner's removal would result in extreme hardship to herself or to her child. The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(G).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.